

Water Supply Well Setbacks – NR 504 and 812

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Background: Both NR 504 and 812 specify a 1200-foot setback between a landfill and a private water supply well. Both codes allow for an exception to be made to this setback requirement. NR 504 *exemptions* and NR 812 *variances* have different information requirements and evaluation criteria. Therefore it is possible for the two DNR programs involved to make contradictory regulatory determinations for a single project – an outcome made more likely because the timelines for the exceptions also differ.

Rule Change Options:

- > Manage the setback through NR 504 (i.e., eliminate the setback from NR 812 for situations where a landfill is proposed to be within 1200 feet of a supply well).
- > Manage the setback through NR 812 (i.e., eliminate the setback from NR 504 if the well has received a variance under NR 812).
- > Continue to maintain the two setback requirements, but modify the timelines, criteria and information requirements to coordinate the decisions more closely.

Issues and Constraints:

- > Current rules allow the landfill owner to apply for a variance on a private citizen’s well, even if the citizen does not wish to have a variance. The variance may have adverse economic repercussions for the citizen.
- > NR 812 allows the well owner to contest a variance. NR 504 is promulgated under the authority of ch. 289, Wis. Stats., which sets up a different procedure for contesting DNR landfill siting decisions.
- > 1200-foot setback dates to pre-Subtitle D days and is viewed by some as arbitrary, not based on science.

- > The landfill siting process is predicated on the idea that landfills serve a larger societal purpose and an individual landowner should not have effective veto rights on the siting of a landfill.
- > Current policy is to require a re-examination of exemptions to locational standards when a landfill expands contiguously, even if the expansion area itself would not violate the setbacks.
- > NR 502 and 503 also contain setback requirements for various SW facilities, some of which are not mirrored in NR 812.
- > NR 812 criterion for variance—“when strict compliance is not feasible”—is not defined and may create fodder for legal challenges to variances.